

SENATE BILL NO. 446

INTRODUCED BY STORY, GILLAN, BRUEGGEMAN, KEANE, R. BROWN, LARSEN, BECKER,
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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING HOSPITAL LAWS TO PROVIDE LICENSING REQUIREMENTS FOR SPECIALTY HOSPITALS; REQUIRING AN IMPACT STUDY BEFORE A SPECIALTY HOSPITAL IS LICENSED; REQUIRING PAYMENT NONDISCRIMINATION AND CHARITY CARE POLICIES FOR HOSPITALS; REQUIRING HOSPITALS TO ENSURE 24-HOUR EMERGENCY CARE; AMENDING SECTIONS 50-5-101 AND 50-5-245, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory surgical centers upon their requests and grants accreditation status to the ambulatory surgical centers that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(19) "Department" means the department of public health and human services provided for in 2-15-2201.

(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(21) "Federal acts" means federal statutes for the construction of health care facilities.

(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home

1 health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities,
2 intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers,
3 outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care
4 facilities, and residential treatment facilities.

5 (b) The term does not include offices of private physicians, dentists, or other physical or mental health
6 care workers regulated under Title 37, including licensed addiction counselors.

7 (24) "Home health agency" means a public agency or private organization or subdivision of the agency
8 or organization that is engaged in providing home health services to individuals in the places where they live.
9 Home health services must include the services of a licensed registered nurse and at least one other therapeutic
10 service and may include additional support services.

11 (25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy
12 services.

13 (26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral
14 medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services
15 include an educational component for the patient, the patient's caregiver, or the patient's family member.

16 (27) "Hospice" means a coordinated program of home and inpatient health care that provides or
17 coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family
18 arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages
19 of illness and dying and that includes formal bereavement programs as an essential component. The term
20 includes:

21 (a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that
22 meets all medicare certification regulations for freestanding inpatient hospice facilities; and

23 (b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that
24 can house three or more hospice patients.

25 (28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services
26 for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as
27 otherwise provided by law, services provided ~~may or may not~~ must include ~~obstetrical care, medical personnel~~
28 available to provide emergency care on site 24 hours a day, or and may include any other service allowed by
29 state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes,
30 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term

1 includes:

2 (i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and
3 tubercular patients; and

4 (ii) specialty hospitals.

5 (b) The term does not include critical access hospitals.

6 (c) THE EMERGENCY CARE REQUIREMENT FOR A HOSPITAL THAT SPECIALIZES IN PROVIDING HEALTH SERVICES
7 FOR PSYCHIATRIC, DEVELOPMENTALLY DISABLED, OR TUBERCULAR PATIENTS IS SATISFIED IF THE EMERGENCY CARE IS
8 PROVIDED WITHIN THE SCOPE OF THE SPECIALIZED SERVICES PROVIDED BY THE HOSPITAL AND BY PROVIDING 24-HOUR
9 NURSING CARE BY LICENSED REGISTERED NURSES.

10 (29) "Infirmarium" means a facility located in a university, college, government institution, or industry for the
11 treatment of the sick or injured, with the following subdefinitions:

12 (a) an "infirmarium--A" provides outpatient and inpatient care;

13 (b) an "infirmarium--B" provides outpatient care only.

14 (30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility
15 that provides intermediate developmental disability care for two or more persons.

16 (b) The term does not include community homes for persons with developmental disabilities that are
17 licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under
18 52-4-203.

19 (31) "Intermediate developmental disability care" means the provision of intermediate nursing care
20 services, health-related services, and social services for persons with a developmental disability, as defined in
21 53-20-102, or for persons with related problems.

22 (32) "Intermediate nursing care" means the provision of nursing care services, health-related services,
23 and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

24 (33) "Joint commission on accreditation of healthcare organizations" means the organization nationally
25 recognized by that name that surveys health care facilities upon their requests and grants accreditation status
26 to a health care facility that it finds meets its standards and requirements.

27 (34) "Licensed health care professional" means a licensed physician, physician assistant, advanced
28 practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the
29 department of labor and industry.

30 (35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care,

1 residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more
2 individuals or that provides personal care.

3 (b) The term does not include community homes for persons with developmental disabilities licensed
4 under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care
5 facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations
6 providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult
7 correctional facilities operating under the authority of the department of corrections.

8 (36) "Medical assistance facility" means a facility that meets both of the following:

9 (a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that
10 provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless
11 a longer period is required because transfer to a hospital is precluded because of inclement weather or
12 emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction
13 retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse
14 practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety
15 of the individual.

16 (b) either is located in a county with fewer than six residents a square mile or is located more than 35
17 road miles from the nearest hospital.

18 (37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental
19 illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any
20 combination of these services.

21 (38) "Nonprofit health care facility" means a health care facility owned or operated by one or more
22 nonprofit corporations or associations.

23 (39) "Offer" means the representation by a health care facility that it can provide specific health services.

24 (40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and
25 prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions
26 of a youth and that:

27 (i) serves either adjudicated or nonadjudicated youth;

28 (ii) charges a fee for its services; and

29 (iii) provides all or part of its services in the outdoors.

30 (b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts,

1 4-H clubs, or other similar organizations.

2 (41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed
3 physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for
4 surgical services.

5 (42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization
6 that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and
7 that may include recovery care beds.

8 (43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care
9 facility.

10 (44) "Person" means an individual, firm, partnership, association, organization, agency, institution,
11 corporation, trust, estate, or governmental unit, whether organized for profit or not.

12 (45) "Personal care" means the provision of services and care for residents who need some assistance
13 in performing the activities of daily living.

14 (46) "Practitioner" means an individual licensed by the department of labor and industry who has
15 assessment, admission, and prescription authority.

16 (47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours
17 by a patient recovering from surgery or other treatment.

18 (48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the
19 rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological
20 and social services, or vocational evaluation and training or any combination of these services and in which the
21 major portion of the services is furnished within the facility.

22 (49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

23 (50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted
24 living facility, or a retirement home.

25 (51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment
26 facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral
27 dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's
28 condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge
29 to less restrictive levels of care at the earliest possible time.

30 (52) "Residential treatment facility" means a facility operated for the primary purpose of providing

1 residential psychiatric care to individuals under 21 years of age.

2 (53) "Retirement home" means a building or buildings in which separate living accommodations are
3 rented or leased to individuals who use those accommodations as their primary residence.

4 (54) "Skilled nursing care" means the provision of nursing care services, health-related services, and
5 social services under the supervision of a licensed registered nurse on a 24-hour basis.

6 (55) (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis,
7 care, or treatment of one or more of the following categories:

8 (i) patients with a cardiac condition;

9 (ii) patients with an orthopedic condition;

10 (iii) patients undergoing a surgical procedure; or

11 (iv) patients treated for cancer-related diseases and receiving oncology services.

12 (b) For purposes of this subsection (55), a specialty hospital may provide other services for medical
13 diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law
14 if the care encompasses 35% or less of the hospital services.

15 (c) The term "specialty hospital" does not include:

16 (i) psychiatric hospitals;

17 (ii) rehabilitation hospitals;

18 (iii) children's hospitals;

19 (iv) long-term care hospitals; or

20 (v) critical access hospitals.

21 (56) "State health care facilities plan" means the plan prepared by the department to project the need for
22 health care facilities within Montana and approved by the governor and a statewide health coordinating council
23 appointed by the director of the department.

24 (57) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute
25 care or extended skilled nursing care to a patient."

26
27 **NEW SECTION. Section 2. Hospital discrimination based on ability to pay prohibited -- charity**
28 **care requirements.** (1) A hospital must have IN WRITING:

29 (a) a policy applying to all patients, including medicaid and medicare patients, that prohibits
30 discrimination based on a patient's ability to pay ~~and on the amount to be paid for services provided~~; and

(b) a charity care policy consistent with industry standards applicable to the area the facility serves and the tax status of the hospital.

(2) A hospital may not transfer a patient to another hospital or health care facility based on the patient's ability to pay for health care services.

NEW SECTION. Section 3. Transfer of hospital patients. In cases where the federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. 1395dd, does not apply, a hospital may not transfer a patient to another hospital using only a call to a 9-1-1 service. The hospital shall:

(1) before the transfer, provide notice to the other hospital, including the reason for the transfer; and

(2) during the transfer, provide the medical records related to the patient's current hospitalization.

Section 4. Section 50-5-245, MCA, is amended to read:

"50-5-245. Department to license specialty hospitals -- standards -- rulemaking -- moratorium. (1)

Subject to subsection (4), the department shall license specialty hospitals using the requirements for licensure of hospitals and the procedure provided for in parts 1 and 2 of this chapter.

(2) ~~The~~ Prior to approving an application under this section, the department shall adopt rules that are necessary to implement and administer this section.

(3) Notwithstanding the requirements of subsection (1), the department may not accept an application or issue a license for a specialty hospital until before July 1, 2009.

(4) A health care facility licensed by the department and in existence on May 8, 2007, may not change its licensure status in order to qualify for licensure as a specialty hospital unless the health care facility is licensed as a hospital AND THE HOSPITAL IS NOT SUBJECT TO THE PROVISIONS OF [SECTION 5] AND SUBSECTIONS (5) THROUGH (9) OF THIS SECTION.

(5) A specialty hospital meets the 24-hour emergency care requirements for a hospital, as defined in 50-5-101, if it has an agreement with a hospital in the area served by the specialty hospital stating that the hospital will provide 24-hour emergency care to patients of the specialty hospital.

(6) A specialty hospital applying for a license must have:

(a) a charity care policy meeting the provisions of [section 2] and, if applicable, subsection (9) of this section; and

(b) a joint venture relationship with a hospital; or

1 (c) a signed statement from a nonprofit hospital in the community acknowledging that the hospital
2 declined a bona fide, good faith opportunity to participate in a joint venture with the applicant.

3 (7) A specialty hospital owned by physicians and proposed as a joint venture with a nonprofit hospital
4 in the community may be licensed if:

5 (a) the majority of partnering physicians hold active privileges with the joint venture hospital; and

6 (b) the partnering hospital holds an ownership interest of at least 50%.

7 (8) This section does not prohibit physicians who are partners in a specialty hospital that is proposed
8 as a joint venture from managing the specialty hospital.

9 (9) The charity care policy for a specialty hospital applying as a joint venture with a nonprofit hospital in
10 the community must be the same as the policy used by the nonprofit hospital."

11
12 **NEW SECTION. Section 5. Specialty hospital application process -- impact study.** (1) The
13 application process for a specialty hospital must include an impact study that analyzes the financial and
14 operational impacts of the proposed specialty hospital on existing health care facilities in the service area.

15 (2) An applicant for a specialty hospital license shall:

16 (a) provide the department with a list of independent consultants who could conduct the impact study
17 required under this section; and

18 (b) pay the costs of the impact study.

19 (3) The department shall:

20 (a) approve a consultant to conduct an impact study from among the consultants submitted by the
21 applicant or from a list of consultants known to the department;

22 (b) determine the scope of the study necessary to assess the potential positive and adverse impacts on
23 access to health care services in the applicant's proposed service area; and

24 (c) provide an opportunity for public comment and participation in the study process, including the
25 opportunity to comment on the list of consultants provided by an applicant pursuant to subsection (2)(a).

26 (4) The scope of the study established by the department may include but is not limited to:

27 (a) the impact on health care costs in the service area;

28 (b) the impacts on access to emergency care, mental health care, and other subsidized services
29 provided in the service area; and

30 (c) the operational impacts on existing health care facilities located in the service area.

(5) The impact study must be completed within 180 days of the date the department establishes the scope of the study.

(6) If the department finds, based on the results of the impact study and public comment, that a proposed specialty hospital would adversely affect an existing hospital or the community's access to health care services, the department shall:

(a) impose conditions on the applicant and on the specialty hospital, if licensed, to mitigate the adverse impact on the community; or

(b) deny a license to the applicant.

NEW SECTION. Section 6. Codification instruction. (1) [Sections 2 and 3] are intended to be codified as an integral part of Title 50, chapter 5, part 1, and the provisions of Title 50, chapter 5, part 1, apply to [sections 2 and 3].

(2) [Section 5] is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, apply to [section 5].

COORDINATION SECTION. SECTION 7. COORDINATION INSTRUCTION. IF BOTH SENATE BILL NO. 439 AND [THIS ACT] ARE PASSED AND APPROVED, THEN SENATE BILL NO. 439 IS VOID.

NEW SECTION. Section 8. Effective date. [This act] is effective July 1, 2009.

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